

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

Plaintiff Elroy W. Browning (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed March 11, 2005. Plaintiff contends that Defendants violated the Eighth Amendment when Plaintiff was sprayed with OC pepper spray in his cell on or about April 9, 2004.

On June 28, 2007, Plaintiff filed a motion for the attendance of incarcerated witnesses. In this motion, Plaintiff listed several incarcerated witnesses that he believes have information relevant to this case, including Inmate Kelly Blackwell #E-72399. On February 27, 2008, the court issued a writ of habeas corpus ad testificandum that ordered Inmate Kelly Blackwell #E-72399 be brought to trial.

On March 11, 2008 the court received a letter from Inmate Kelly Blackwell #E-72399. Inmate Kelly Blackwell #E-72399 states that he does not know anything about this case or Plaintiff. Inmate Blackwell asks that he be removed from the witness list in this action. Inmate

1 Kelly Blackwell #E-72399 states that he is presently housed in a mental health program and he is
2 physically sick. Inmate Kelly Blackwell #E-72399 asks the court to not transport him away from
3 his current place of incarceration.

4 While this court can order a Warden to produce a state inmate to testify at trial, this
5 court's general policy is to not force unwilling inmate witnesses to trial. Here, Inmate Kelly
6 Blackwell #E-72399 states that he has no information about the events underlying this action.
7 Because Inmate Kelly Blackwell #E-72399 states he knows nothing about the incident, his
8 testimony is not relevant to this action.

9 Accordingly, the court orders that:

- 10 1. The February 27, 2008 writ of habeas corpus ad testificandum that ordered Inmate
11 Kelly Blackwell #E-72399 be brought to trial is VACATED;
- 12 2. The court requests that the California Department of Corrections not move Inmate
13 Kelly Blackwell #E-72399 or disrupt his program based on any order issued in
14 this action.
- 15 3. The Clerk of the Court is DIRECTED to send a courtesy copy of this order to:

16 Kelly Blackwell #E-72399
17 Salinas Valley State Prison
18 P.O. Box 1050
Soledad, CA 93960

19 IT IS SO ORDERED.

20 Dated: March 12, 2008

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE